

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 272 of 2022**

=====

CHERTERED ACCOUNTANTS ASSOCIATION, SURAT
Versus
UNION OF INDIA

=====

Appearance:

MR.AVINASH PODDAR WITH MR NIKUL SINGHVI (9761) for the Petitioner(s) No. 1,2
M R BHATT & CO.(5953) for the Respondent(s) No. 2
MR DEVANG VYAS(2794) for the Respondent(s) No. 1

=====

CORAM:HONOURABLE MR. JUSTICE J.B.PARDIWALA
and
HONOURABLE MS. JUSTICE NISHA M. THAKORE
Date : 11/01/2022

ORAL ORDER
(PER : HONOURABLE MR. JUSTICE J.B.PARDIWALA)

1. We have heard Mr. Avinash Poddar and Mr. Nikul Singhavi, the learned counsel appearing for the writ applicants, Mr. M.R. Bhatt, the learned senior counsel appearing for the respondent No.2 and Mr. Devang Vyas, the learned Additional Solicitor General of India appearing for the respondent No.1 – Union of India.

2. We have been able to understand to some extent the difficulties, which are being experienced by the assessee in uploading the audit report for the purpose of filing the its income tax return. Our attention has also been drawn to the Circular No.17/2021 issued by the Ministry of Finance Department of Revenue, CBDT dated 09.09.2021 with respect to extension of the time limit for filing income tax returns and various reports of audit for the A.Y. 2021-22. Prima facie, it appears that the writ applicants are aggrieved by the clarification 1 in the Circular. Clarification 1 reads thus:

“Clarification 1: It is clarified that the extension of the dates as referred to in clauses (9), (12) and (13) of Circular

No.9/2021 dated 20.05.2021 and as referred to in clauses (1), (4) and (5) of this Circular shall not apply to Explanation 1 to section 234A of the Act in cases where the amount of tax on the total income as reduced by the amount as specified in clauses (I) to (vi) of sub-section (1) of that section exceeds one lakh rupees.”

3. The learned counsel appearing for the writ applicants pointed out that for the purpose of uploading the audit report, the assessee has to generate the Unique Document Identification Number (for short “the UDIN”). This has been made mandatory from 01.07.2019 for all audit. The grievance voiced by the learned counsel appearing for the writ applicants is that on account of technical glitches in the Portal, the Chartered Accountants are finding it very difficult to upload the audit report. In other words, even after generating the UDIN on account of some technical problems in the Portal, the audit reports are not being uploaded. Once the audit report is not uploaded and the return is not filed in time, the some would entail interest under Sections 234A and 234B respectively, late fees under Section 234F and penalty under Section 271B of the Act respectively.

4. Mr. M.R. Bhatt, the learned senior counsel would submit that the apprehension expressed by the writ applicants in the aforesaid regard is not well founded. Mr. Bhatt, the learned senior counsel would like to file a detailed reply explaining the correct position. At this stage, we may only say that if there are any technical problems with the Portal so far as uploading of the audit report is concerned, the same should be attended and looked into by the Authority concerned at the earliest.

5. Mr. Poddar, the learned counsel made a request that the deadline of 15.01.2022 for the purpose of filing the audit report

may be extended to 15.02.2022. We are not inclined to go into this controversy at this point of time. The issues of penalty, interest etc. would arise when the final order of assessment is passed. Even for the purpose of penalty under Section 271B, it is necessary to issue a notice to the assessee. If the assessee has not been in a position to file his return in time on account of his inability to upload the audit report on account of technical glitches in the Portal, he can always point out all such circumstances beyond his control when he is called upon to show cause as to why penalty should not be imposed.

6. However, with all the aforesaid, we once again impress upon the respondent to attend to the technical glitches, which are being experienced in the Portal at the earliest. The Portal is something which is within the control of the respondent and if there are any technical problems in the same, it is only the respondents, who can take care of such problems. At this stage, Mr. Devang Vyas, the learned Additional Solicitor General of India received information that CBDT has issued a Circular No.01/2022 dated 11.01.2022 extending the timeline for filing the income tax return and various reports of audit for the A.Y. 2021-22. The due date of furnishing of Report of Audit under any provision of the Act for the Previous Year 2020-21, which was 30th September, 2021, in the case of assessee referred in clause (a) of Explanation 2 to sub-section (1) of Section 139 of the Act, as extended to 31st October, 2021 and 15th January, 2022 by Circular No.9/2021 dated 20.05.2021 and Circular No.17/2021 dated 09.09.2021 respectively, is hereby further extended to 15th February, 2022. The due date of furnishing of Report of audit under any provision of the Act for the Previous Year 2020-21 which was 31st October, 2021, in the case of assessee referred in clause (aa) of

Explanation 2 to sub-section (1) of Section 139 of the Act, is hereby extended to 15th February, 2022.

7. Post this matter on 08.02.2022 to enable the respondents to file their counter. One copy of the counter shall be furnished to the learned counsel appearing for the writ applicants well in advance. The further progress in the matter with regard to the technical glitches shall be reported to us on the next date of hearing.

One copy each of this order shall be furnished at the earliest to Mr. M.R. Bhatt, the learned senior counsel and Mr. Devang Vyas, the learned Additional Solicitor General of India for its onwards communication.

(J. B. PARDIWALA, J)

(NISHA M. THAKORE, J)

Y.N. VYAS

